

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the uniform special deposit.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/17/2025</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act relative to the uniform special deposit.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 167J the
2 following chapter:-

3 CHAPTER 167K. THE SPECIAL DEPOSITS ACT.

4 SECTION 1. Definitions

5 As used in this chapter, the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:—

7 “Account agreement” means an agreement that:

8 (A) is in a record between a bank and one or more depositors;

9 (B) may have one or more beneficiaries as additional parties; and

10 (C) states the intention of the parties to establish a special deposit governed by this act.

11 “Bank” means a person engaged in the business of banking and includes a savings bank,
12 savings and loan association, credit union, trust company, and a bank as defined in Section 1 of
13 Chapter 167 of the General Laws. Each branch or separate office of a bank is a separate bank for
14 the purpose of this act.

15 “Beneficiary” means a person that:

16 (A) is identified as a beneficiary in an account agreement; or

17 (B) if not identified as a beneficiary in an account agreement, may be entitled to payment
18 from a special deposit:

19 (i) under the account agreement; or (ii) on termination of the special deposit.

20 “Contingency” means an event or circumstance stated in an account agreement that is not
21 certain to occur but must occur before the bank is obligated to pay a beneficiary.

22 “Creditor process” means attachment, garnishment, levy, notice of lien, sequestration, or
23 similar process issued by or on behalf of a creditor or other claimant.

24 “Depositor” means a person that establishes or funds a special deposit.

25 “Good faith” means honesty in fact and observance of reasonable commercial standards
26 of fair dealing.

27 “Knowledge” of a fact means:

28 (A) with respect to a beneficiary, actual knowledge of the fact; or

29 (B) with respect to a bank holding a special deposit:

30 (i) if the bank:

31 (I) has established a reasonable routine for communicating material information to an
32 individual to whom the bank has assigned responsibility for the special deposit; and

33 (II) maintains reasonable compliance with the routine, actual knowledge of the fact by
34 that individual; or (ii) if the bank has not established and maintained reasonable compliance with
35 a routine described in clause (i) or otherwise exercised due diligence, implied knowledge of the
36 fact that would have come to the attention of an individual to whom the bank has assigned
37 responsibility for the special deposit.

38 “Obligated to pay a beneficiary” means a beneficiary is entitled under the account
39 agreement to receive from the bank a payment when:

40 (A) a contingency has occurred; and

41 (B) the bank has knowledge the contingency has occurred.

42 “Obligation to pay a beneficiary” has a corresponding meaning.

43 “Permissible purpose” means a governmental, regulatory, commercial, charitable, or
44 testamentary objective of the parties stated in an account agreement. The term includes an
45 objective to:

46 (A) hold funds:

47 (i) in escrow, including for a purchase and sale, lease, buyback, or other transaction;

48 (ii) as a security deposit of a tenant;

49 (iii) that may be distributed to a person as remuneration, retirement or other benefit, or
50 compensation under a judgment, consent decree, court order, or other decision of a tribunal; or

51 (iv) for distribution to a defined class of persons after identification of the class members
52 and their interest in the funds;

53 (B) provide assurance with respect to an obligation created by contract, such as earnest
54 money to ensure a transaction closes;

55 (C) settle an obligation that arises in the operation of a payment system, securities
56 settlement system, or other financial market infrastructure;

57 (D) provide assurance with respect to an obligation that arises in the operation of a
58 payment system, securities settlement system, or other financial market infrastructure; or

59 (E) hold margin, other cash collateral, or funds that support the orderly functioning of
60 financial market infrastructure or the performance of an obligation with respect to the
61 infrastructure.

62 “Person” means an individual, estate, business or nonprofit entity, government or
63 governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a
64 protected series, however denominated, of an entity if the protected series is established under
65 law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of
66 the entity or of any other protected series of the entity to satisfy a claim from assets of the
67 protected series.

68 “Record” means information:

69 (A) inscribed on a tangible medium; or

70 (B) stored in an electronic or other medium and retrievable in perceivable form.

71 “Special deposit” means a deposit that satisfies Section 4.

72 “State” means a state of the United States, the District of Columbia, Puerto Rico, the
73 United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the
74 United States. The term includes an agency or instrumentality of the state.

75 SECTION 2. Scope; Choice of Law; Forum

76 (a) This act applies to a special deposit under an account agreement that states the
77 intention of the parties to establish a special deposit governed by this act, regardless of whether a
78 party to the account agreement or a transaction related to the special deposit, or the special
79 deposit itself, has a reasonable relation to this state.

80 (b) The parties to an account agreement may choose a forum in this state for settling a
81 dispute arising out of the special deposit, regardless of whether a party to the account agreement
82 or a transaction related to the special deposit, or the special deposit itself, has a reasonable
83 relation to this state.

84 (c) This act does not affect:

85 (1) a right or obligation relating to a deposit other than a special deposit under this act; or

86 (2) the voidability of a deposit or transfer that is fraudulent or voidable under other law.

87 SECTION 3. Variation by Agreement or Amendment

88 (a) The effect of Sections 1 through 5, 7 through 10, and 13 may not be varied by
89 agreement, except as provided in those sections. Subject to subsection (b), the effect of Sections
90 6, 11, and 12 may be varied by agreement.

91 (b) A provision in an account agreement or other record that substantially excuses
92 liability or substantially limits remedies for failure to perform an obligation under this act is not
93 sufficient to vary the effect of a provision of this act.

94 (c) If a beneficiary is a party to an account agreement, the bank and the depositor may
95 amend the agreement without the consent of the beneficiary only if the agreement expressly
96 permits the amendment.

97 (d) If a beneficiary is not a party to an account agreement and the bank and the depositor
98 know the beneficiary has knowledge of the agreement's terms, the bank and the depositor may
99 amend the agreement without the consent of the beneficiary only if the amendment does not
100 adversely and materially affect a payment right of the beneficiary.

101 (e) If a beneficiary is not a party to an account agreement and the bank and the depositor
102 do not know whether the beneficiary has knowledge of the agreement's terms, the bank and the
103 depositor may amend the agreement without the consent of the beneficiary only if the
104 amendment is made in good faith.

105 SECTION 4. Requirements for Special Deposit

106 A deposit is a special deposit if it is:

107 (1) a deposit of funds in a bank under an account agreement;

108 (2) for the benefit of at least two beneficiaries, one or more of which may be a depositor;

109 (3) denominated in a medium of exchange that is currently authorized or adopted by a
110 domestic or foreign government;

111 (4) for a permissible purpose stated in the account agreement; and

112 (5) subject to a contingency.

113 SECTION 5. Permissible Purpose

114 (a) A special deposit must serve at least one permissible purpose stated in the account
115 agreement from the time the special deposit is created in the account agreement until termination
116 of the special deposit.

117 (b) If, before termination of the special deposit, the bank or a court determines the special
118 deposit no longer satisfies subsection (a), Sections 7 through 10 cease to apply to any funds
119 deposited in the special deposit after the special deposit ceases to satisfy subsection (a).

120 (c) If, before termination of a special deposit, the bank determines the special deposit no
121 longer satisfies subsection (a), the bank may take action it believes is necessary under the
122 circumstances, including terminating the special deposit.

123 SECTION 6. Payment to Beneficiary by Bank

124 (a) Unless the account agreement provides otherwise, the bank is obligated to pay a
125 beneficiary if there are sufficient actually and finally collected funds in the balance of the special
126 deposit.

127 (b) Except as provided in subsection (c), the obligation to pay the beneficiary is excused
128 if the funds available in the special deposit are insufficient to cover such payment.

129 (c) Unless the account agreement provides otherwise, if the funds available in the special
130 deposit are insufficient to cover an obligation to pay a beneficiary, a beneficiary may elect to be
131 paid the funds that are available or, if there is more than one beneficiary, a pro rata share of the
132 funds available. Payment to the beneficiary making the election under this subsection discharges
133 the bank's obligation to pay a beneficiary and does not constitute an accord and satisfaction with
134 respect to another person obligated to the beneficiary.

135 (d) Unless the account agreement provides otherwise, the obligation of the bank obligated
136 to pay a beneficiary is immediately due and payable.

137 (e) The bank may discharge its obligation under this section by:

138 (1) crediting another transaction account of the beneficiary; or

139 (2) taking other action that:

140 (i) is permitted under the account agreement for the bank to obtain a discharge; or

141 (ii) otherwise would constitute a discharge under law.

142 (f) If the bank obligated to pay a beneficiary has incurred an obligation to discharge the
143 obligation of another person, the obligation of the other person is discharged if action by the
144 bank under subsection (e) would constitute a discharge of the obligation of the other person
145 under law that determines whether an obligation is satisfied.

146 SECTION 7. Property Interest of Depositor or Beneficiary

147 (a) Neither a depositor nor a beneficiary has a property interest in a special deposit.

148 (b) Any property interest with respect to a special deposit is only in the right to receive
149 payment if the bank is obligated to pay a beneficiary and not in the special deposit itself. Any
150 property interest under this subsection is determined under other law.

151 SECTION 8. When Creditor Process Enforceable Against Bank

152 (a) Subject to subsection (b), creditor process with respect to a special deposit is not
153 enforceable against the bank holding the special deposit.

154 (b) Creditor process is enforceable against the bank holding a special deposit with respect
155 to an amount the bank is obligated to pay a beneficiary or a depositor if the process:

156 (1) is served on the bank;

157 (2) provides sufficient information to permit the bank to identify the depositor or the
158 beneficiary from the bank's books and records; and

159 (3) gives the bank a reasonable opportunity to act on the process.

160 (c) Creditor process served on a bank before it is enforceable against the bank under
161 subsection (b) does not create a right of the creditor against the bank or a duty of the bank to the
162 creditor. Other law determines whether creditor process creates a lien enforceable against the
163 beneficiary on a contingent interest of a beneficiary, including a depositor as a beneficiary, even
164 if not enforceable against the bank.

165 SECTION 9. Injunction or Similar Relief

166 A court may enjoin or grant similar relief that would have the effect of enjoining, a bank
167 from paying a depositor or beneficiary only if payment would constitute a material fraud or
168 facilitate a material fraud with respect to a special deposit.

169 SECTION 10. Recoupment or Set Off

170 (a) Except as provided in subsection (b) or (c), a bank may not exercise a right of
171 recoupment or set off against a special deposit.

172 (b) An account agreement may authorize the bank to debit the special deposit:

173 (1) when the bank becomes obligated to pay a beneficiary, in an amount that does not
174 exceed the amount necessary to discharge the obligation;

175 (2) for a fee assessed by the bank that relates to an overdraft in the special deposit
176 account;

177 (3) for costs incurred by the bank that relate directly to the special deposit; or

178 (4) to reverse an earlier credit posted by the bank to the balance of the special deposit
179 account, if the reversal occurs under an event or circumstance warranted under other law of this
180 state governing mistake and restitution.

181 (c) The bank holding a special deposit may exercise a right of recoupment or set off
182 against an obligation to pay a beneficiary, even if the bank funds payment from the special
183 deposit.

184 SECTION 11. Duties and Liability of Bank

185 (a) A bank does not have a fiduciary duty to any person with respect to a special deposit.

186 (b) When the bank holding a special deposit becomes obligated to pay a beneficiary, a
187 debtor-creditor relationship arises between the bank and beneficiary.

188 (c) The bank holding a special deposit has a duty to a beneficiary to comply with the
189 account agreement and this act.

190 (d) If the bank holding a special deposit does not comply with the account agreement or
191 this act, the bank is liable to a depositor or beneficiary only for damages proximately caused by
192 the noncompliance. Except as provided by other law of this state, the bank is not liable for
193 consequential, special, or punitive damages.

194 (e) The bank holding a special deposit may rely on records presented in compliance with
195 the account agreement to determine whether the bank is obligated to pay a beneficiary.

196 (f) If the account agreement requires payment on presentation of a record, the bank shall
197 determine within a reasonable time whether the record is sufficient to require payment. If the
198 agreement requires action by the bank on presentation of a record, the bank is not liable for
199 relying in good faith on the genuineness of the record if the record appears on its face to be
200 genuine.

201 (g) Unless the account agreement provides otherwise, the bank is not required to
202 determine whether a permissible purpose stated in the agreement continues to exist.

203 SECTION 12. Term and Termination

204 (a) Unless otherwise provided in the account agreement, a special deposit terminates five
205 years after the date the special deposit was first funded.

206 (b) Unless otherwise provided in the account agreement, if the bank cannot identify or
207 locate a beneficiary entitled to payment when the special deposit is terminated, and a balance
208 remains in the special deposit, the bank shall pay the balance to the depositor or depositors as a
209 beneficiary or beneficiaries.

210 (c) A bank that pays the remaining balance as provided under subsection (b) has no
211 further obligation with respect to the special deposit.

212 SECTION 13. Principles of Law and Equity

213 Chapter 106 of the General Laws, consumer protection law, law governing deposits
214 generally, law related to escheat and abandoned or unclaimed property, and the principles of law
215 and equity, including law related to capacity to contract, principal and agent, estoppel, fraud,
216 misrepresentation, duress, coercion, mistake, and bankruptcy, supplement this act except to the
217 extent inconsistent with this act.

218 SECTION 14. Uniformity of Application and Construction

219 In applying and construing this uniform act, a court shall consider the promotion of
220 uniformity of the law among jurisdictions that enact it.

221 SECTION 15. Transitional Provision

222 This act applies to:

223 (1) a special deposit made under an account agreement executed on or after the effective
224 date of this act; and

225 (2) a deposit made under an agreement executed before the effective date of this act, if:

226 (A) all parties entitled to amend the agreement agree to make the deposit a special deposit
227 governed by this act; and

228 (B) the special deposit referenced in the amended agreement satisfies Section 4.

229 SECTION 16. Severability

230 If a provision of this act or its application to a person or circumstance is held invalid, the
231 invalidity does not affect another provision or application that can be given effect without the
232 invalid provision.

233 SECTION 17. Effective Date

234 This act takes effect on January 1, 2026.